

AMENDED IN ASSEMBLY JANUARY 3, 2000

AMENDED IN ASSEMBLY APRIL 26, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 827**

**Introduced by Assembly Member Baldwin**  
*(Coauthor: Senator Vasconcellos)*

February 24, 1999

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An act to amend Sections 2051 and 2063 of, and to add Sections 852 and 2331 to, the Business and Professions Code, and to amend Sections 109300 and 110405 of, and to add Section 109251 to, the Health and Safety Code, relating to healing arts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 827, as amended, Baldwin. Healing arts: nonconventional treatment.

(1) Existing law provides for the licensure and regulation of practitioners of the healing arts, as specified.

The bill would provide that various, specified licensed practitioners of the healing arts who elect to provide nonconventional treatment, as defined, shall inform their patient or the person responsible therefor, as specified, that the treatment is nonconventional as well as the possible benefits and risks, the foreseeable outcomes, the provider's education, training, and experience in relation to the contemplated treatment, and any other truthful and nonmisleading information required in order to make an

informed and understanding determination regarding whether to undertake or refuse the recommended nonconventional treatment.

(2) Existing law specifies that the physician's and surgeon's certificate authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions.

This bill would clarify that the certificate also authorizes the holder to diagnose, and would specify that the term "all other methods" applies to both conventional and nonconventional methods for those purposes.

(3) Existing law regarding the licensure and regulation of physicians and surgeons provides that it shall not be construed to discriminate against any particular school of medicine or surgery, school or college of podiatry medicine, or any other treatment.

This bill would further provide that that law shall not be construed to prevent the use of any system, methods, or mode of treating the sick or afflicted, whether conventional or nonconventional, ~~for which the licensee has a reasonable expectation of efficacy.~~

(4) Existing law provides for the investigation and administrative adjudication of complaints against licensed physicians and surgeons.

This bill would provide that in the investigation of complaints involving issues of speciality clinical practice, investigators shall consult experts who are of the same specialty of practice, and in the investigation of complaints involving nonconventional clinical practice, investigators shall consult experts who dedicate a significant portion of their practice to nonconventional health care and diagnosis.

(5) Existing law specifically regulates the treatment of cancer and other specific serious diseases.

This bill would state that these provisions shall be construed to apply to the use of any health care remedy, procedure, or treatment not generally accepted by the majority of the health care practice community of the licensee, including the use of dietary supplements and homeopathy, as specified.



(6) Existing law provides that the sale offering for sale, holding for sale, delivering, giving away, prescribing or administering of any drug, medicine, compound, or device to be used in the diagnosis, treatment, alleviation, or cure of cancer is unlawful and prohibited, as specified, unless an application with respect thereto has been approved under the Federal Food, Drug and Cosmetic Act, or an approved application has been filed with the Medical Board of California, as specified.

This bill would delete from the definition of that crime the unapproved treatment or alleviation of cancer.

(7) Under existing law, it is unlawful to disseminate any false advertisement of a food, drug, or cosmetic, as specified, except as to certain advertisements in professional periodicals or public health materials, or the drug or device has received approval for a specified use and is so advertised.

This bill would add to the above exemptions accurate and truthful reporting by a health care practitioner of the results of the administration of a medical treatment in a medical or scientific journal, or a professional seminar, convention, or meeting, or to other such persons as long as the person reporting receives no financial benefit of any kind from the manufacturer, distributor, or seller of any substance or product used in that treatment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 852 is added to the Business and  
2 Professions Code, to read:  
3 852. (a) All persons licensed pursuant to Chapter 4  
4 (commencing with Section 1600), Chapter 5  
5 (commencing with Section 2000), Chapter 6  
6 (commencing with Section 2700), Chapter 6.6  
7 (commencing with Section 2900), Chapter 11  
8 (commencing with Section 4800), or Chapter 12  
9 (commencing with Section 4925) of this division, or  
10 pursuant to the Osteopathic Act (set forth as Chapter 8  
11 (commencing with Section 3600)) of this division, who

1 ~~elect to provide nonconventional treatment, shall inform~~  
2 *elect to provide treatment that is nonconventional to*  
3 *their practice, shall inform* their patient, or his or her  
4 parent, guardian, conservator, or owner, as appropriate,  
5 that the treatment is nonconventional *to their practice*,  
6 as well as the possible benefits and risks, the foreseeable  
7 outcomes, the provider's education, training, and  
8 experience in relation to the contemplated treatment,  
9 and any other truthful and nonmisleading information  
10 that the patient, and his or her parent, guardian,  
11 conservator, or owner, as appropriate, would require in  
12 order to make an informed and understanding  
13 determination regarding whether to undertake or refuse  
14 the recommended nonconventional treatment. This  
15 information may include any or all of the following, as  
16 appropriate:

17 (1) Descriptions of the documented structure,  
18 function, or mechanism by which the nonconventional  
19 remedy or treatment affects the body.

20 (2) The existence of scientific literature that reports  
21 upon or reviews medical claims in relation to the  
22 recommended treatment.

23 (3) Information regarding the degree of acceptance of  
24 the contemplated treatment by the general medical  
25 community.

26 (b) For purposes of this section, ~~nonconventional~~  
27 ~~treatment has the meaning set forth in subdivision (b) of~~  
28 ~~Section 2051.~~ *“nonconventional treatment” means those*  
29 *health care methods of diagnosis, treatment, or*  
30 *intervention that are not acknowledged to be*  
31 *conventional, but that may be offered by some licentiates*  
32 *of that healing art in addition to, or as an alternative to,*  
33 *conventional treatment, and that provide a reasonable*  
34 *potential for therapeutic gain in the patient's medical*  
35 *condition not reasonably outweighed by the risk of those*  
36 *methods.*

37 (c) For purposes of this section, *“conventional*  
38 *treatment” means those health care methods of diagnosis,*  
39 *treatment, or intervention that are offered by most*

1 *licentiates of that healing art as generally accepted*  
2 *methods or routine practice.*

3 (d) *This section shall not be construed to permit a*  
4 *licentiate to provide a specific treatment that the*  
5 *licentiate is not authorized to provide under his or her*  
6 *license.*

7 SEC. 2. Section 2051 of the Business and Professions  
8 Code is amended to read:

9 2051. (a) The physician's and surgeon's certificate  
10 authorizes the holder to diagnose, to use drugs or devices  
11 in or upon human beings, to sever or penetrate the tissues  
12 of human beings, and to use any and all other methods,  
13 conventional or nonconventional, in the treatment of  
14 diseases, injuries, deformities, and other physical and  
15 mental conditions.

16 (b) For purposes of this section, "nonconventional  
17 treatment" means those health care methods of diagnosis,  
18 treatment, or intervention that are not acknowledged to  
19 be conventional, but that may be offered by some  
20 licensed physicians in addition to, or as an alternative to,  
21 conventional ~~medicine~~ *treatment*, and that provide a  
22 reasonable potential for therapeutic gain in *the* patient's  
23 medical condition not reasonably outweighed by the risk  
24 of those methods.

25 (c) For purposes of this section, "conventional  
26 treatment" means those health care methods of diagnosis,  
27 treatment, or intervention that are offered by most  
28 licensed physicians as generally accepted methods of  
29 ~~routine practice, based upon medical training,~~  
30 ~~experience, and the peer-reviewed scientific literature.~~  
31 *routine practice.*

32 SEC. 3. Section 2063 of the Business and Professions  
33 Code is amended to read:

34 2063. Nothing in this chapter shall be construed so as  
35 to discriminate against any particular school of medicine  
36 or surgery, school or college of podiatric medicine, or any  
37 other treatment, or to prevent the use of any system,  
38 method, or mode of treating the sick or afflicted, whether  
39 ~~conventional or nonconventional, for which the licensee~~  
40 ~~has a reasonable expectation of efficacy, nor shall it~~

1 *conventional or nonconventional, nor shall it* regulate,  
2 prohibit, or apply to any kind of treatment by prayer, nor  
3 interfere in any way with the practice of religion.

4 SEC. 4. Section 2331 is added to the Business and  
5 Professions Code, to read:

6 2331. In the investigation of complaints involving  
7 issues of specialty clinical practice, investigators shall  
8 consult experts who are of the same specialty of practice,  
9 and in the investigation of complaints involving  
10 nonconventional clinical practice, investigators shall  
11 consult experts who dedicate a significant portion of their  
12 practice to nonconventional health care and diagnosis.

13 SEC. 5. Section 109251 is added to the Health and  
14 Safety Code, to read:

15 109251. This chapter shall be construed to authorize  
16 the use of any health care remedy, procedure, or  
17 treatment not generally accepted by the majority of the  
18 health care practice community of the licensee, which  
19 may include, but is not limited to, dietary supplements,  
20 as defined in the Federal Food, Drug, and Cosmetic Act  
21 (~~21 U.S.C. Sec. 321(ff)~~), and homeopathy, as the term is  
22 used in the Federal Food, Drug, and Cosmetic Act (~~21~~  
23 ~~U.S.C. Sec. 321(g)~~), for the alleviation and treatment of  
24 cancer.

25 SEC. 6. Section 109300 of the Health and Safety Code  
26 is amended to read:

27 109300. The sale, offering for sale, holding for sale,  
28 delivering, giving away, prescribing or administering of  
29 any drug, medicine, compound, or device to be used in  
30 the diagnosis or cure of cancer is unlawful and prohibited  
31 unless (1) an application with respect thereto has been  
32 approved under Section 505 of the Federal Food, Drug,  
33 and Cosmetic Act (21 U.S.C. Sec. 355), or (2) there has  
34 been approved an application filed with the board setting  
35 forth:

36 (a) Full reports of investigations that have been made  
37 to show whether or not the drug, medicine, compound,  
38 or device is safe for the use, and whether the drug,  
39 medicine, compound, or device is effective in the use;

1 (b) A full list of the articles used as components of the  
2 drug, medicine, compound, or device;

3 (c) A full statement of the composition of the drug,  
4 medicine, compound, or device;

5 (d) A full description of the methods used in, and the  
6 facilities and controls used for, the manufacture,  
7 processing, and packing of the drug, medicine, or  
8 compound or in the case of a device, a full statement of  
9 its composition, properties, and construction and the  
10 principle or principles of its operation;

11 (e) Such samples of the drug, medicine, compound, or  
12 device and of the articles used as components of the drug,  
13 medicine, compound, or device as the board may require;  
14 and

15 (f) Specimens of the labeling and advertising  
16 proposed to be used for the drug, medicine, compound,  
17 or device.

18 SEC. 7. Section 110405 of the Health and Safety Code  
19 is amended to read:

20 110405. An advertisement that is not unlawful under  
21 Section 110390 is not unlawful under Section 110403 if it  
22 is any of the following:

23 (a) Disseminated only to members of the medical,  
24 dental, pharmaceutical, or veterinary professions, or  
25 appears only in the scientific periodicals of these  
26 professions, or is disseminated only for the purpose of  
27 public health education by persons not commercially  
28 interested, directly or indirectly, in the sale of drugs or  
29 devices.

30 (b) An advertisement that a drug or device has a  
31 specific curative or therapeutic effect on a condition,  
32 disorder, or disease listed in Section 110403 if the drug or  
33 device is approved or cleared for marketing for that  
34 specific curative or therapeutic effect through any of the  
35 following means:

36 (1) A new drug application approved pursuant to  
37 Section 111500 or Section 505 of the federal act (21 U.S.C.  
38 Sec. 355).

1 (2) An abbreviated new drug application approved  
2 pursuant to Section 505 of the federal act (21 U.S.C. Sec.  
3 355).

4 (3) A licensed biological product pursuant to Section  
5 351 of the Public Health Service Act (42 U.S.C. Sec. 262).

6 (4) An over the counter drug that meets the  
7 requirements of Part 330 of Title 21 of the Code of Federal  
8 Regulations.

9 (5) A new animal drug application approved under  
10 Section 512 of the federal act (21 U.S.C. Sec. 360b).

11 (6) An abbreviated new animal drug application  
12 approved pursuant to Section 512 of the federal act (21  
13 U.S.C. Sec. 360b).

14 (7) A new device application approved pursuant to  
15 Section 111550.

16 (8) A device premarket approval application  
17 approved under Section 515 of the federal act (21 U.S.C.  
18 Sec. 360e).

19 (9) A determination of substantial equivalence for a  
20 device pursuant to Section 513(f)(1) of the federal act (21  
21 U.S.C. Sec. 360c(i)).

22 (c) An accurate and truthful reporting by a person  
23 licensed, certified, or registered pursuant to Division 2  
24 (commencing with Section 500) of the Business and  
25 Professions Code of the results of the administration of a  
26 medical treatment in a medical or scientific journal, or a  
27 professional seminar, convention, or meeting, or to other  
28 such persons as long as the person reporting receives no  
29 financial benefit of any kind from the manufacturer,  
30 distributor, or seller of any substance or product used in  
31 that treatment.

